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**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Application Number	09/393,473
Filing Date	September 10, 1999
First Named Inventor	Wayne Cohen
Group Art Unit	2837
Examiner Name	S. Hsieh
Attorney Docket Number	A32636 (072708.0116)

Total Number of Pages in This Submission

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks <input type="checkbox"/>		

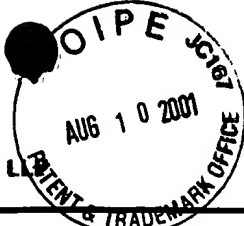
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	BakerBotts LLP 30 Rockefeller Plaza New York, NY 10112	
Signature		Att Name: James J. Maune PTO Reg: 26,946
Date	August 8, 2001	

CERTIFICATE OF MAILINGI hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: August 8, 2001

Typed or printed name	James J. Maune	
Signature		Date August 8, 2001

BAKER BOTTS LLP



AF/2837

FEE TRANSMITTAL for FY 2001

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT

(\$ 155

Complete if Known

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Filing Date	September 10, 1999
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Group Art Unit	2837
Attorney Docket No.	A32636 (072708.0116)

METHOD OF PAYMENT

1. ☐ The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit Account Number **02-4377**
Deposit Account Name **Baker Botts LLP**

☒ Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17

☐ Applicant claims small entity status. See 37 CFR 1.27

2. ☒ Payment Enclosed:

☒ Check ☐ Credit card ☐ Money Order ☐ Other

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee (\$)	Small Entity Fee (\$)	Fee Description	Fee Paid
710	355	Utility filing fee	
320	160	Design filing fee	
490	245	Plant filing fee	
710	355	Reissue filing fee	
150	75	Provisional filing fee	

SUBTOTAL (1) (\$ 0

2. EXTRA CLAIM FEES

Extra Claims Fee from below Fee Paid

Total Claims .20** = x = 0

Independent Claims -3** = x = 0

Multiple Dependent =

Large Entity Fee (\$)	Small Entity Fee (\$)	Fee Description
18	9	Claims in excess of 20
80	40	Independent claims in excess of 3
270	135	Multiple dependent claim, if not paid
80	40	** Reissue independent claims over original patent
18	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2)

(\$ 0

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Fee (\$)	Small Entity Fee (\$)	Fee Description	Fee Paid
130	65	Surcharge - late filing fee or oath	
50	25	Surcharge - late provisional filing fee or cover sheet	
130	130	Non-English specification	
2,520	2,520	For filing a request for <i>ex parte</i> reexamination	
920*	920*	Requesting publication of SIR prior to Examiner action	
1,840*	1,840*	Requesting publication of SIR after Examiner action	
110	55	Extension for reply within first month	
390	195	Extension for reply within second month	
890	445	Extension for reply within third month	
1,390	695	Extension for reply within fourth month	
1,890	945	Extension for reply within fifth month	
310	155	Notice of Appeal	
310	155	Filing a brief in support of an appeal	155
270	135	Request for oral hearing	
1,510	1,510	Petition to institute a public use proceeding	
110	55	Petition to revive - unavoidable	
1,240	620	Petition to revive - unintentional	
1,240	620	Utility issue fee (or reissue)	
440	220	Design issue fee	
600	300	Plant issue fee	
130	130	Petitions to the Commissioner	
50	50	Processing fee under 37 CFR 1.17(q)	
180	180	Submission of Information Disclosure Stmt	
40	40	Recording each patent assignment per property (times number of properties)	
710	355	Filing a submission after final rejection (37 CFR § 1.129(a))	
710	355	For each additional invention to be examined (37 CFR § 1.129(b))	
710	355	Request for Continued Examination (RCE)	
900	900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 155

SUBMITTED BY

Name (Print/Type) **James J. Maune**Registration No. (Attorney/Agent) **26,946**

Complete (if applicable)

Telephone **(212) 408-2566**

Signature

Date **August 8, 2001**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: Cohen, Wayne)
Serial No.: 09/393,473)
Filed: September 10, 1999)
For: MARACA WITH FLEXIBLE HANDLE)
On Appeal to the
Board of Appeals
Group Art Unit: 2837
Examiner Hsieh

BRIEF ON APPEAL

August 8, 2001
New York, New York

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TABLE OF AUTHORITIES

STATUTES

35 U.S.C. §103(a)	3, 5
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant:	Cohen, Wayne)	
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Serial No.:	09/393,473)	On Appeal to the
)	Board of Appeals
Filed:	September 10, 1999)	
)	Group Art Unit: 2837
For:	MARACA WITH FLEXIBLE HANDLE)	
)	

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BRIEF ON APPEAL

I. REAL PARTY IN INTEREST

This application is owned by the inventor Wayne Cohen, who is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Appellant has appealed the Final Rejection of Claims 13 and 14, constituting all pending claims, as set forth in The Office Action of February 1, 2001. No claims are allowed. Claim 13 and 14 are set forth in the Appendix to this Brief.

IV. STATUS OF AMENDMENTS

There are no amendments filed subsequent to the Examiner's Final Rejection.

V. SUMMARY OF THE INVENTION

Applicant's invention is a key chain ornament formed as a miniature maraca. The ornament includes a hollow shell with pellets for producing a maraca sound. A handle is joined to the shell and is formed of flexible material. The overall length of the ornament corresponds approximately to the width of a person's hand. A bore is provided for attachment to a key chain.

The invention is a improvement over the maraca structure described in Kralik, et al. Patent 5,808,215, of which Wayne Cohen, the inventor herein, is co-inventor and owner. In particular, a small version of the maraca of the '215 patent was fashioned, including a bore in the handle for use as a key chain ornament. As initially fabricated, the rigid handle of the maraca of the '215 Patent had a tendency to break. According to the invention, the handle is modified by fabrication from flexible material, which avoids the breakage problem.

VI. THE ISSUES ON APPEAL

The issues on this appeal is whether there is a suggestion in the prior art to modify the maraca of the Kralik, et al. patent to form a key chain ornament as specified in claims 13 and 14.

VII. GROUPING OF THE CLAIMS

Claims 13 and 14 stand or fall together.

VIII. ARGUMENT

The final rejection of claims 13 and 14 is based on 35 U.S.C. §103 and stated as follows:

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kralik et al. in view of Isackson (5,659,143).

Kralik et al. disclose a maraca as stated in the office action of 7/19/2000. The difference between Kralik et al.'s maraca and claims 13 and 14 is that the claims recite using the maraca as an ornament for a key chain, and a bore is formed in the distal end of the handle of the maraca.

Isackson teaches using the maraca as an ornament for a key chain, and a bore is formed in the distal end of the handle of the maraca for receiving a key chain (col. 3, last line, and col. 4, lines 1-4). It would have been obvious to a person having ordinary skill in the art to modify Kralik et al.'s ornament as taught by Isackson to include the maraca as an ornament for a key chain, and a bore is formed in the distal end of the handle of the maraca for the purpose of receiving a key chain.

In this rejection the Examiner incorrectly states the difference between Kralik's maraca and the article claimed in claims 13 and 14. Applicant does not dispute that if the claims were directed merely to using a maraca as a key chain ornament, they might be properly rejected as obvious over Kralik in view of Isackson. The claims, however, clearly specify that the handle of the claimed article is "fabricated of flexible material permitting resilient bending of said handle." This feature of the invention is intended to avoid the breakage problem the inventor recognized and solved. See, e.g., Specification, page 2, lines 3-10; page 4, line 20 to page 5, line 4.

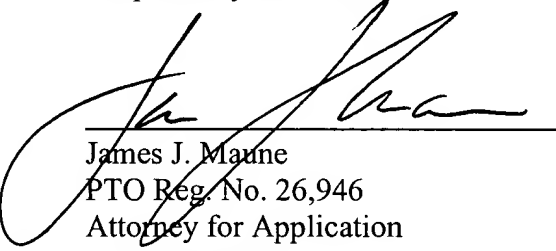
Nothing in the Kralik patent suggests this feature, and while the Isackson patent suggests that the Shaker Instrument therein described can be attached to a key chain, it does not describe any handle, much less a flexible one. Even if Isackson suggests using the Kralik maraca as a key chain ornament, the result would be a maraca with a bore in the rigid handle, which is subject to the problem solved by the claimed invention.

In paragraph 3 of the Final Rejection the Examiner makes reference to the teachings of the Zadek Patent 2,364,581, but the Examiner has not stated a rejection based on this reference.

IX. CONCLUSION

Accordingly, the Examiner's rejection under 35 U.S.C. §103 on the basis of the Kralik Patent in view of Isackson is factually insufficient and should be reversed.

Respectfully submitted,



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APPENDIX

13. An ornament for a key chain or key ring comprising a hollow shell with pellets therein joined to an elongated handle, wherein said handle is fabricated of flexible material permitting resilient bending of said handle, said ornament having the overall shape of a miniature maraca having an overall length corresponding to the approximate width of a person's hand, and said ornament including a bore sized for receiving a key ring or key chain member.

14. An ornament as specified in Claim 13 wherein said bore is formed in the distal end of said handle.